

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS 630/1 *et seq.* (This is a GIL.)

April 29, 2009

Dear Xxxxx:

This letter is in response to your letter dated October 27, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC represents a client, hereinafter referred to as Corporation X or the Company. Corporation X is a network services and broadband access provider. The company resells broadband internet access and connectivity circuits, which it packages with other products and services. The Company works with its clients, usually retail companies or multi-site businesses, to create broadband-enabled networks that match and satisfy the client's specific needs and efficiency requirements. Corporation X also offers network reliability and connectivity management, network security support, and advanced network equipment maintenance and support.

Currently, approximately 54% of Corporation X's sales are for direct internet access. The Company works with third-party network partners, typically telecommunications providers and exchange carriers, in order to resell and market internet access for each client's wide area network (WAN). Corporation X will also help clients transform any of their business sites into wireless access 'hotspots', utilizing Wireless fidelity (Wi-Fi) internet service. Various broadband access technologies are used to provide this service, such as Digital Subscriber Line (DSL), Cable, Plain Old Telephone Service (POTS) and Ethernet.

Corporation X also offers a multi-carrier networking service that provides clients with a specially-tailored connection to a WAN maintained by the Company. The Company

utilizes different networking and data transfer technologies like Multi Protocol Label Switching (MPLS), Asynchronous Transfer Mode (ATM), and Frame Relay to create personalized network areas. Corporation X examines the client's business site or sites and consults with staff in order to design a tailored network; the Company then orders a broadband connection from one of its network partners. Once this order is completed, the Company sends third-party technicians to install the proper networking and broadband connection equipment. This network connection allows access to various business and internet applications. The Company also offers Client Support Teams to help maintain these networks and remotely troubleshoot any issues.

Corporation X offers a Virtual Private Network (VPN) service. This service combines broadband internet access with security appliance software to form secure connectivity between endpoints using the public internet as the backbone medium. The broadband component includes resold services from the Company's partners, which can include various local exchange carriers, cable operators and other telecommunications providers. Through the VPN service, the Company maintains remote access to device configuration, deployment and management of the client's network.

The Company offers a web-based video management system that utilizes the Company's existing infrastructure. This product is designed to be used in conjunction with video cameras around a client's business site to provide real-time surveillance from any network-accessible location.

The Company also offers other value-added services in conjunction with their various products and service lines. Corporation X offers secure internet gateway services wherein the Company reroutes and monitors information sent over a client's WAN. The Company also offers specialized support and management services for retail clients, including dynamic signage, wiring service and Wi-Fi implementation. Corporation also offers proactive, remote circuit monitoring and will work with underlying third-party carriers in order to restore service in the event of a system failure or network outage.

The Company is not currently registered with any state jurisdiction as a local exchange carrier or telecommunications provider. Corporation X does not lease ('collocate') any network elements from local exchange carriers, nor has it ever engaged in any interconnection agreements, paid intercarrier compensation, or received any line sharing discounts. Corporation X has no central office and does not possess or build any telecommunications facilities or lines itself. No services currently sold or marketed by the Company provide customers with telephone service or telephone end user demarcation points; the Company merely provides internet access and/or networking solutions for businesses. Furthermore, no NXX codes have been assigned to Corporation X.

Corporation X desires to register to do business in Illinois and file sales and use tax returns. We believe some of the Company's products and services may be subject to sales and use taxes in Illinois and we wish to get a clearer understanding of the taxability of these products and services for purposes of registering with the state. Therefore, we would appreciate your guidance on the taxability of Corporation X's products and services, which include:

- Direct internet access, including Wi-Fi service, provided through third-party network partners

- Multi-carrier networking service and WAN connection, also provided in conjunction with network partners and third-party technicians
- Virtual Private Network services for corporate clients
- Web-based video management and security systems
- Secure internet gateway and monitoring services
- Specialized retail support and management services
- Remote network circuit monitoring and maintenance

Please provide written confirmation to us as to the taxability of the products and services described above. If the Illinois Department of Revenue believes the products and services described above to be taxable, kindly provide us with the relevant state tax law, letter rulings or court decisions that inform your determination.

If you have any questions, please call me. Your assistance and cooperation in this matter is greatly appreciated.

DEPARTMENT'S RESPONSE:

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 630/3 and 4. The Simplified Municipal Telecommunications Tax Act allows municipalities to impose a tax on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by persons in Illinois at a rate not to exceed 6% for municipalities with a population of less than 500,000, and at a rate not to exceed 7% for municipalities with a population of 500,000 or more, of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 636/5-10 and 5-15.

“Gross charges” means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. “Gross charges” do not include charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to charge its form or content. “Gross charges” also do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges in the books and records of the retailer. See 35 ILCS 630/2.

“Telecommunications,” in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. As used in the Act, “private line” means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations.

The definition of “telecommunications” does not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. “Telecommunications” does not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale. See 35 ILCS 630/2(c).

As stated above, “gross charges” do not include “charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content.” See 86 Ill. Adm. Code 495.100(c). “Telecommunications” do not include “value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.” See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

The Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access until November 1, 2014. 47 USCA § 151 note; § 1101. “Internet access”:

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

(E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

Telecommunications that are purchased, used or sold by a provider *to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet* are subject to the federal moratorium. Thus, not all telecommunications are subject to the moratorium. In addition, paragraph D of the definition of “Internet access” excludes “voice, audio or video programming, or other products and services (except services described in

subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E).” Therefore, telecommunications, including for example Voice over Internet Protocol (VoIP), that are not purchased, used or sold to a provider to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet, are not subject to the federal moratorium and are subject to the Telecommunications Excise Tax.

Based on our review of the limited information you provided on the services described in your letter, some of the services may not be subject to Telecommunications Excise Tax, provided that the charges for such services are disaggregated and separately identified from other charges in the books and records of the telecommunications retailer. See 86 Ill. Adm. Code 495.100.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

RSW:msk